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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

September 20, 2004

BY HAND DELIVERY

Mr. Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 5492: Freedom, Inc.

On behalf of Freedom, Inc. and William Carson, who was designated "as Treasurer" in the Commission's assignment of this matter (collectively, "Freedom, Inc."), this letter is submitted in response to the complaint filed by Gale Banks dated August 2, 2004, and subsequently designated as MUR 5492.¹

I. BACKGROUND

Founded in 1962, Freedom, Inc. is a nonprofit organization incorporated under the laws of Missouri. Its principal mission is to maximize the political strength of local African-American leaders within the State of Missouri through the concerted efforts of grassroots volunteers. It is governed by a board of more than 80 individuals, the vast majority of whom neither seek nor hold elective office. As a nonfederal political organization registered with the Missouri Ethics Commission under Missouri law, it files regular reports disclosing receipts and disbursements under state law.

Traditionally, Freedom, Inc. has endorsed slates of candidates for state and local office. It collects donations from endorsed candidates and from other sources eligible for use under state law, and uses those funds to pay for communications promoting its slate.

¹ Freedom, Inc. is a nonfederal political organization and is not registered with the Commission. It has never designated William Carson as a treasurer under 11 C.F.R. § 102.7. For this reason, and because the Complaint alleges no violation committed by Mr. Carson personally, Freedom, Inc. respectfully requests the Commission to dismiss him from this Matter.

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In the past, Freedom, Inc. has endorsed the local candidacies of Emanuel Cleaver, who was mayor of Kansas City and who has run on three prior occasions for Kansas City city council. When Mayor Cleaver ran in the 2004 primary election for the United States House of Representatives in Missouri's Fifth Congressional District, Freedom, Inc. endorsed him for that election as well.

Per its normal practice, Freedom, Inc. used funds raised from endorsed candidates and other sources to pay for the communications referenced in the complaint. Per its normal practice, Freedom, Inc. itself planned, developed and distributed the communications – not the endorsed candidates or their respective agents. Per its normal practice, Freedom, Inc. disclosed its activities to the Missouri Ethics Commission.

Freedom, Inc. undertook these activities while understanding them to be governed by Missouri state law. Because of its focus on the state and local level, Freedom, Inc. did not understand that activities undertaken with reference to Mayor Cleaver, who was a former local officeholder, might implicate Commission regulations. Similarly, Freedom, Inc. was unfamiliar with the new restrictions placed by the Bipartisan Campaign Reform Act of 2002. Freedom, Inc. has since taken steps to ensure full compliance with all the laws that may affect its activities. These steps include the retention of outside legal counsel with specific expertise in the requirements of Commission regulations.

II. ERRORS IN THE COMPLAINT

While the Complaint correctly attributes the identified communications to Freedom, Inc., it nonetheless errs in two respects:

First, the Complaint twice identifies Mayor Cleaver as a member of Freedom, Inc.'s board. In fact, Mayor Cleaver does not serve on the board, nor did he at the time the communications in question were developed or distributed.


Second, the Complaint alleges without substantiation that the communications were coordinated with Mayor Cleaver. While it claims that Freedom, Inc.'s communications "were planned in coordination with" the Cleaver campaign, it offers no evidence to support the necessary conduct element of coordination, other than the incorrect and unsupported assertion that Mayor Cleaver serves on the board.

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The only other specific fact pled by the Complaint on coordination is that the Cleaver campaign donated funds to Freedom, Inc. However, this fact does not tend to suggest that there was any "request or suggestion," "material involvement," "substantial discussion," use of a "common vendor," or use of a "former employee or independent contractor." 11 C.F.R. §§ 109.21(d)(1)-(5). To the contrary, as discussed above, Freedom, Inc. developed and distributed the communications – not its endorsed candidates or their agents.

To the extent any violation of Commission regulations can be fairly alleged to have occurred here, it would have been as a consequence of Freedom, Inc.'s focus on Missouri state and local elections, and its concomitant unfamiliarity with the specific requirements of Federal law. As noted above, Freedom, Inc. is taking steps to ensure that in the future, all its activities are conducted in accordance with Federal as well as Missouri election law. Accordingly, Freedom, Inc. respectfully requests the Commission to exercise its prosecutorial discretion and take no further action in this Matter.

Very truly yours,



Brian G. Svoboda
Ezra W. Reese
Counsel to Freedom, Inc.

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STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent

MUR 5492NAME OF COUNSEL: William S. ProhodaFIRM: Perkins Cole LLPADDRESS: 407 14th Street, NWWashington, D.C. 20005TELEPHONE: (202) 434-1654FAX: (202) 434-9150

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

WILLIAM CARSON

Print Name

9-2-04

Date

William Carson

Signature

TREASURER

Title

9-2-04

Mark P. Ryan (MARK PRYANT)

616-360-1243 (office)

President of Freedom, Inc.RESPONDENT'S NAME: Freedom, Inc. and William Carson as TreasurerADDRESS: P.O. Box 270326Essex City, MO 64527

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